

**ORIGINAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Service Rules for the 746-764 and )  
776-794 MHz Bands, and )  
Revisions to Part 27 of the )  
Commission's Rules )

WT Docket No. 99-168

RECEIVED

MAR 17 2000

FEDERAL COMMUNICATIONS COMMISSION  
SECRETARY

**REPLY OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS TO  
OPPOSITIONS TO PETITION FOR RECONSIDERATION**

The National Association of Broadcasters ("NAB")<sup>1</sup> submits this reply to certain oppositions to NAB's petition for partial reconsideration of the Commission's *First Report and Order* in this proceeding.<sup>2</sup> In the *First Report*, the Commission adopted licensing and service rules for the commercial spectrum located in the 700 MHz bands, which was previously reallocated from its exclusive use for television broadcasting on channels 60-69. In its petition, NAB, *inter alia*, sought reconsideration of the Commission's decision to consider regulatory requests to implement arrangements that facilitate new licensees' use of the 700 MHz bands through the early cessation of analog television service. That decision was, according to NAB's petition, contrary to Congress' intent that viewers not lose their existing analog television service prior to the completion of the transition to digital television ("DTV"). Several oppositions to NAB's petition were filed, contending that the Commission correctly decided to consider

<sup>1</sup> NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

<sup>2</sup> *First Report and Order* in WT Docket No. 99-168, FCC 00-5 (rel. Jan. 7, 2000) ("*First Report*").

No. of Copies rec'd 0+11  
List ABCDE

regulatory requests designed to accommodate new licensees' use of the 700 MHz bands during the DTV transition.<sup>3</sup> In addition, one opposition contends that the Commission should exercise its regulatory authority to force existing broadcasters in the 700 MHz bands to relocate to lower channels.<sup>4</sup> NAB replies to these oppositions.

#### **I. The Mandatory Channel Relocation Scheme Is Technically and Practically Unworkable.**

Spectrum Exchange urges the Commission to adopt a mandatory channel relocation rule under which, "if a comparable station below channel 59 is willing to clear, then a station in channels 59-69 is obliged to relocate to the cleared lower channel." This mandatory relocation plan "includes the possibility of a DTV station being moved to the slot of a comparable analog station." Opposition of Spectrum Exchange at 3.

NAB believes that this relocation plan is wholly impractical and technically infeasible. As an initial matter, the plan assumes that there will in fact be "comparable" stations below channel 59 located in the same market as stations on channels 59-69 that are "willing to clear." NAB sees no basis for this assumption. Most of the stations assigned to channels 60-69 are in markets where vacant lower channel assignments are not available. In addition, NAB sees little incentive for broadcasters below channel 59 to "clear" by ceasing their analog transmissions (and converting to DTV-only transmissions on their digital channels) at a time when the vast majority of viewers in their markets are still incapable of receiving digital television signals.

But regardless of any practical problems, this relocation scheme is also technically infeasible because DTV and analog stations are not "comparable," and DTV stations cannot be relocated to the "slot" of an analog station (or vice versa), as Spectrum Exchange asserts.

---

<sup>3</sup> See Oppositions of Motorola; the Association of Public-Safety Communications Officials-International, Inc. ("APCO"); and US West Wireless, LLC ("US West").

<sup>4</sup> See Opposition of Spectrum Exchange Group, LLC ("Spectrum Exchange").

Indeed, Spectrum Exchange's plan reveals a fundamental misunderstanding of the Commission's television allotment system.

The Commission has created specific tables of allotments for both NTSC (analog) channels and DTV channels. Each assignment defines, in Spectrum Exchange's terms, the "slot" where a station can be placed. However, the DTV table of allotments and the NTSC table of allotments were created based on different technical planning factors. As a result, a DTV station generally cannot be placed on a channel that was allotted based on NTSC planning factors. If, as Spectrum Exchange proposes, a DTV station were to be placed on an NTSC channel (or vice versa), that DTV station would likely cause interference to other DTV and NTSC stations on both co- and adjacent channels, thereby upsetting the Commission's overall DTV allocation plan and the digital transition process.<sup>5</sup> In sum, the proposed relocation scheme is technically infeasible because television stations and allocations – especially between DTV and NTSC – simply are not fungible in the manner that Spectrum Exchange presumes.<sup>6</sup>

---

<sup>5</sup> To make a DTV station "fit" into an analog channel allocation, the power and therefore the coverage area of the station would have to be completely re-engineered. In addition, the station being relocated to an analog channel allotment would likely have to replace its transmitter, transmission line and antenna to operate on this new channel. Thus, Spectrum Exchange clearly errs in assuming that an analog allotment can ever be regarded as "comparable" to a digital channel allotment. Its scheme would also impose substantial technical burdens and costs on the DTV stations forced to relocate. These same problems would occur if NTSC stations were forced to relocate to DTV channels.

<sup>6</sup> NAB notes that APCO's opposition (at 4 n.4) reveals a similar misconception. If an analog television licensee on channels 60-69 were to "move its analog signal to its digital allotment" but continue its analog operation "prior to final digital conversion," the DTV and NTSC allotment plans would be adversely impacted, especially in populous urban areas with numerous television stations.

## **II. The Commission's Approval of Either Mandatory or "Voluntary" Efforts Resulting in the Premature Cessation of Analog Television Service Is Contrary to Congressional Intent and Will Not Serve the Public Interest.**

Section 309(j)(14)(A) of the Communications Act requires reclamation of the six MHz channels that broadcasters now use for transmission of analog television service by no later than December 31, 2006. 47 U.S.C. § 309(j)(14)(A). Congress recognized in adopting Section 309(j)(14), however, "that not all consumers and broadcast stations will convert to the new digital television service format at the same time." H.R. Rep. No. 217, 105th Cong., 1st Sess. 576 (1997). To "*ensure* that a significant number of consumers in any given market are not left without broadcast television service as of January 1, 2007," Congress adopted Section 309(j)(14)(B) of the Communications Act "which *requires* the Commission to grant extensions [of the 2006 target date] to any station in any television market if any one of . . . three conditions exist." *Id.* at 576-77 (emphasis added).<sup>7</sup> In addition, Section 337(d)(2) of the Communications Act requires the Commission to establish additional technical restrictions needed "to protect full-service analog television service and digital television service during a transition to digital television service." 47 U.S.C. § 337(d)(2).

Thus, the terms of Sections 309(j)(14) and 337(d)(2), and the legislative history of those provisions, make clear Congress' intention to "ensure" that existing analog television service will continue without interference until certain specified statutory conditions were met. H.R.

---

<sup>7</sup> Section 309(j)(14)(B) specifies that broadcasters will be permitted to keep their channels for analog television service beyond 2006 if: (i) one or more of the largest television stations in a market do not begin DTV transmission by the 2006 target through no fault of their own; (ii) digital-to-analog converter technology is not generally available in a market; or (iii) fewer than 85% of the television households in a market are able to receive digital television signals (either off the air or through a cable-type service that includes DTV stations). 47 U.S.C. § 309(j)(14)(B).

Rep. No. 217, 105th Cong., 1st Sess. 576 (1997). Spectrum Exchange's scheme involving the vacating of broadcasters from channels below 59 so that broadcasters on channels 59-69 could be forcibly relocated to lower channels clearly contravenes congressional intent in this regard. In attempting to justify its plan, Spectrum Exchange baldly states that most viewers of channels 59-69 today receive the signals through cable systems or direct broadcast satellite, so early clearing of those channels would have little impact on television viewers. *See* Opposition of Spectrum Exchange at 2. NAB emphasizes that there is no factual support whatsoever for this assertion.<sup>8</sup> In adopting Sections 309(j)(14) and 337(d)(2), Congress clearly intended to prevent such losses of analog television service during the DTV transition.

Indeed, even the Commission's consideration of allegedly "voluntary" arrangements facilitating use of the 700 MHz bands by new licensees during the DTV transition is contrary to Congress' intent, if such arrangements result in the premature loss of analog television service. Because Congress by statute has already determined that the public interest would best be served by the continuation of analog television service until specific statutory conditions have been fulfilled, the Commission lacks the discretion to conclude that the public interest would instead be served by use of the 700 MHz bands by new licensees.<sup>9</sup> Contrary to the oppositions of Motorola and US West, respectively, the Commission does not have the authority to give equal consideration to the use of the 700 MHz spectrum for public safety services, or to balance the

---

<sup>8</sup> But even beyond those viewers who currently receive channels 59-69 over-the-air, what about the viewers of the channels below 59 who would lose that over-the-air analog service under Spectrum Exchange's scheme when the lower channels are cleared and those licensees convert to DTV-only transmissions on their digital channels?

<sup>9</sup> An agency "must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). Because Congress has unambiguously expressed its intention to ensure that consumers not lose their

interests of broadcast viewers with the objective of facilitating deployment of new commercial services in the 700 MHz band.

In this regard, NAB agrees with Commissioner Tristani's February 28, 2000 statement on clearing television broadcasters from channels 60-69:

I am not convinced that pressing television broadcast licensees to prematurely vacate channels 60-69 is in the public interest. In the Balanced Budget Act of 1997, Congress specifically protected broadcasters operating in channels 60-69 during the digital transition in order to ensure that the public is not deprived of free, over-the-air broadcast service until the transition is complete. We ought to respect Congress' judgment.

NAB is particularly concerned that, in deciding to consider "voluntary" arrangements facilitating use of the 700 MHz spectrum by new licensees, the Commission will, in the words of Commissioner Tristani, in effect be "pressing" broadcasters to prematurely vacate channels 60-69, regardless of the loss of existing analog television service. NAB clearly has grounds for believing that incumbent broadcasters and new licensees will likely view the term "voluntary" somewhat differently. *See* Opposition of Spectrum Exchange at 3 ("Against a backdrop of mandatory channel relocation, we anticipate that most relocations and all clearings will in fact occur *voluntarily*." ) (emphasis added).

---

analog television service prematurely, that "intention is the law and must be given effect." *Id.* at 843 n.9.

### III. Conclusion

For the reasons set forth above, NAB respectfully requests that the Commission reconsider the issues raised in NAB's petition for partial reconsideration of the *First Report and Order*.

Respectfully submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430

A handwritten signature in cursive script, reading "Jerianne Timmerman", is written over a horizontal line.

Henry L. Baumann  
Jack N. Goodman  
Jerianne Timmerman

Kelly T. Williams  
NAB Science and Technology

March 17, 2000

## CERTIFICATE OF SERVICE

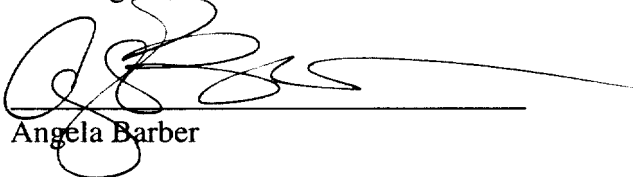
I, Angela Barber, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Reply of the National Association of Broadcasters was sent this 17<sup>th</sup> day of March, 2000, by first class mail, postage prepaid to the following:

Julia Kane  
Jeffry Brueggeman  
U S WEST, Inc.  
1020 19<sup>th</sup> Street, NW  
Suite 700  
Washington, DC 20036

Peter Cramton  
Spectrum Exchange Group, LLC  
4405 Holly Hill Road  
Hyattsville, MD 20742

Robert M. Gurss  
Shook, Hardy & Bacon, L.L.P.  
600 14<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005

Dr. Richard C. Barth  
Motorola  
1350 I Street, NW  
Suite 400  
Washington, DC 20005



Angela Barber